

August 23, 2023

RE: Request for Review and Reform of London's Yard & Lot Maintenance Bylaw PH-9

Dear London Council Members,

I write on an important issue before Council. My request for bylaw review is made in the context of my expertise in ecological landscape design, as Professor in the School of Planning and Director of the [Ecological Design Lab](#) at Toronto Metropolitan University, and as Visiting Professor of Landscape Architecture at Harvard University. My research lab focuses on urban biodiversity, and in particular, on Bylaws for Biodiversity – municipal ordinances that support and enhance biodiversity through lawn naturalization and healthy yard practices (for which we have been awarded the [Ontario Professional Planner's Public Education Award](#)). We have developed a [model bylaw](#) (used by Prince Edward County in their recent bylaw revision in June and Toronto for their bylaw revision in 2021) along with [a toolkit for municipal planners](#). My lab has published reports that analyse and compare municipal bylaws for biodiversity across 14 North American cities, and developed an [FAQ section for residents](#). We also have an [in-depth guide to lawn naturalization](#) available on our website.

In the past three years, we have been regularly asked to provide advice and support for municipalities across Ontario (and elsewhere) which are updating their bylaws to support biodiversity, pollinator pathways and healthy landscapes for climate resilience. We also provide advice in court, as expert witnesses in legal cases brought by citizens against municipalities whose bylaws are being challenged as unconstitutional. We have won and settled two of those cases, with another in progress. I offer this context to underscore that lawn naturalization and the support of biodiversity on private property is very much a current issue and bylaws are under scrutiny across the province.

I commend London Council for considering a timely and important revision of the Lot Maintenance bylaw at an opportune moment. The public benefits of this bylaw are clear and many. In 2019 the global Intergovernmental Panel on Biodiversity and Ecosystem Services (IPES) released a dire report, naming the global biodiversity crisis, and warning of a catastrophic loss of species in progress. Today, we recognize that the climate crisis is bound up with biodiversity loss. We know that to address climate resilience, we must protect biodiversity and create habitats for other species. While public spaces in parks and protected areas are important, most of the lands here are in private ownership. Thus, the role of the private property owner is critical and we can, with good policies and supportive bylaws, support biodiversity on and across private land within our communities. Specifically, we can ground and amplify support for biodiversity (for nature) at home, in our yards and gardens. Research shows that climate anxiety is growing, and people often feel helpless. ***But hope lies in the garden, at home in our***

yards: a bylaw that supports (rather than punishes) yard naturalization offers our community both hope and opportunity to do something tangible, something positive and healing that builds connections and supports biodiversity and climate resilience.

I note that the City of London has many progressive policies related to ecological health, and it is important that the City's Yard and Lot Maintenance By-law support, rather than subvert, these policies. Such policies should, at a minimum, apply equally on public and private lands.

Unfortunately, the current bylaw, includes a number of provisions that conflict with ecological health and best practices for landscapes to support biodiversity. More concerning still is that several key terms used in the bylaw are vague, arbitrary and undefined, and thus are confusing to both residents and enforcement. Ultimately this can lead to subjective and unfair enforcement.

I request and recommend that Council support a review of London's Yard and Lot By-law PH-9 for the following reasons:

- The bylaw requires the removal of "weeds or grass more than 20 centimetres (8 inches) in height," yet nowhere are these terms defined. The bylaw implies but does not state that plants prohibited (or required to be cut down below 20cm) are those plants listed in the Weed Control Act (see Sections 4.6 and 4.7 of the bylaw). However, it is not clear that the plants designated under the Act as Noxious Weeds are the ONLY plants regulated as "weeds" under the bylaw. It is also important to note that the term "weeds" is vague, subjective and arbitrary, and that the Weed Control Act is intended, as written in the Act, to apply only to agricultural lands and lands of horticultural production, not to urban areas.
- With regards to the term "grasses," it is not clear in the bylaw if this refers only to lawn turfgrass or if ALL 12,000+ species of graminoids are required to be cut to 20cm, surely an overly broad prohibition and yet a prohibition as the bylaw is currently written.
- The term "Domestic Waste" as defined in the bylaw includes grass clippings, tree cuttings, brush and leaves. Sections 2.5, 2.6, 2.8, 2.9, 3.1, 3.4, 3.5, 3.10, 4.6 and 4.7 require that these ecologically valuable materials be removed from the landscape. However, best practices dictate that grass clippings be left on mown lawns to return nutrients and organic matter to the soil; that cut branches are important habitat for numerous wildlife species such as birds and pollinators; and that leaves should be left where they fall in order to provide habitat for pollinators, valuable and free mulching materials, and soil protection and enhancement through nutrient recycling. To label these ecologically valuable materials "waste" and require them to be removed cannot be justified for any health or safety reasons and subverts the City's environmental goals.
- The definition of "Naturalized Area" specifies that only native species are allowed to grow in an area to be considered "naturalized." Not only does this not fall within the standard definition of "naturalization" (which specifically includes non-native plants that spread without cultivation), and thus can lead to confusion, but it means that any of the numerous non-native naturalized (but non-invasive) plants that re-establish from the soil seed bank are required to be cut, if one wants to utilize the naturalized area exemption.

- It is unclear, and needlessly complicated, to include a separate category in the bylaw for “Wildflower Meadows” and then proscribe one particular maintenance technique for maintaining a meadow (i.e., mowing once or twice per year). There are many different methods of maintaining a meadow. As well, a wildflower meadow is an example of a “naturalized area,” so to have a separate category is both confusing and unnecessary. As well, as written the bylaw prohibits someone from creating a meadow with the intention of allowing the meadow to naturally grow into a woodland with trees and shrubs—something that is a natural process and ecologically valuable, along with being a personal choice that should be allowed, particularly if one’s goal is to “emulate a natural area.”

- “Naturalized area” exemptions in grass and weeds bylaws have the effect of stigmatizing natural gardens as somehow suspect and requiring of permission. When Toronto revised its grass and weeds bylaw in 2021/2022, the natural garden exemption **was removed** on the advice and urging of the Subject Matter Experts, who argued that the rules should be clear and the same for ALL gardens. When Prince Edward County updated its bylaw in June 2023, it wisely elected not to include an exemption clause for similar reasons.

- Part 5 Enforcement includes no provision for appeal. I am not a lawyer so I cannot comment on the legality of this absence of an appeal mechanism, but I would urge you to consider this absence as a lack of due process.

- Sections 5.8 c) and 5.11 b) use the term “reasonable particulars.” Again, given the subjective nature of the terms used in the bylaw, I urge you to consider specificity and clarity if/when conducting your review of the bylaw. I would suggest that “reasonable particulars” should include a list of the specific plants that require action to be undertaken.

Given the above-mentioned issues with the current bylaw, I urge you to vote in support of a review of the bylaw. Further, I urge you to include the following guidelines to staff for the revisions:

- 1) Instruct the City’s legal staff to thoroughly review the Bell and Counter decisions in which the Ontario Superior Court has already ruled on matters very similar to those raised by London’s current bylaws and to ensure that any revisions conform to the two court rulings on natural gardens.

- 2) Instruct the City’s legal staff and bylaw staff to thoroughly review the Model Bylaw prepared by Carly Murphy and found on the Ecological Design Lab’s website, <https://ecologicaldesignlab.ca/project/urban-biodiversity-studio/>, which offers a model for a grass and weeds bylaw in support of biodiversity. In other words, in undertaking a revision to the bylaw, you do not need to “reinvent the wheel.”

- 3) Instruct staff to review the rules related to boulevard plantings and ensure that they are clear, enabling and in sync with the Yard and Lot Maintenance By-law.

- 4) Prioritize the harmonization of this bylaw with the City of London’s other forward-

thinking and ecologically valuable policies related to environmental health and best practices. The “well-being of the inhabitants of the municipality” is identified as a goal of the City’s Yard and Lot Maintenance By-law. With this proposed review, you have the opportunity to put this goal in practice and encourage ecological well-being in the yards and gardens of London.

I request that my letter be published as part of the public agenda and available for public review.

Sincerely,

A handwritten signature in black ink, appearing to be 'NM', written in a cursive style.

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